

EARL A. TENLEY

IBLA 80-221

Decided May 7, 1980

Appeal from decision of the Idaho State Office, Bureau of Land Management, declaring 96 mining claims abandoned and void. IMC 45502.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

43 CFR 3833.1-2(a) states that the owner of an unpatented mining claim, millsite, or tunnel site on Federal lands located on or before Oct. 21, 1976, shall file (file shall mean being received and date stamped by the proper BLM office) on or before Oct. 22, 1979, a copy of the official record of the notice or certificate of location of the claim or site filed under state law. The depositing of a copy of the document in the mail does not constitute a "filing" within the context of the regulation.

APPEARANCES: Earl A. Tenley, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

This appeal is from a decision dated November 20, 1979, of the Idaho State Office, Bureau of Land Management (BLM), declaring Moon #1 through #96 lode mining claims abandoned and void for failure to timely file a copy of the official record of the notices of location, as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the regulation 43 CFR 3833.1-2.

Moon #1 through #96 mining claims were located in 1970. Under 43 CFR 3833.1-2, 1/ a notice of location for each of the claims was required to be filed with BLM on or before October 22, 1979. The notices of location were received for recording by BLM on October 24, 1979.

[1] The provisions of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and the pertinent regulation, 43 CFR 3833.1-2(a), require that the owner of an unpatented mining claim located prior to October 21, 1976, file with the proper BLM office an official location notice of said claim on or before October 22, 1979. Failure to file the required instrument is deemed conclusively to constitute an abandonment of the mining claim. 43 U.S.C. § 1744(c) (1976), 43 CFR 3833.4.

FLPMA and its implementing regulations mandate the consequences of failure to file. This Board has repeatedly held that when the recordation requirements are not met the mining claims must be deemed abandoned and void. Charles and Pete Caress, 41 IBLA 302 (1979); Nuclear Power and Energy Co., 41 IBLA 142 (1979); Al Sherman, 38 IBLA 300 (1978); Ronald L. Nordwick, 36 IBLA 238 (1978); Paul S. Coupey, 35 IBLA 112 (1978).

Tenley seeks to justify his late filing by asserting the following arguments in his statement of reasons: 2/

#1 Filed by due date Oct 22, 1979 in Us P.O. Wenatchee, Wash. Even such important things as U.S. Income Tax recognizes that when they are in the U.S. mails by due date its considered filed. Also after that the sender has no control over it.

#2 Post Office Money Order. You-had the money guaranteed by U.S. Govt. Thats why I took extra precaution of purchasing a M.O. Could have saved money by sending a personal check which you might say could be N S F.

1/ 43 CFR 3833.1-2 provides in pertinent part:

"(a) The owner of an unpatented mining claim, mill site or tunnel site located on or before October 21, 1976, on Federal lands, excluding lands within units of the National Park System established before September 28, 1976, but including lands within a national monument administered by the United States Fish and Wildlife Service or the United States Forest Service, shall file (file shall mean being received and date stamped by the proper BLM Office) on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim or site filed under state law."

2/ Moon #1 through #96 were located by Frank A. Morbeck. The appeal is filed by Earl Tenley, but his interest in the claims is unknown.

#3 BLM could have been late in picking up due to heavy influx of mail. Only 4 hr. trip - 1 hour by Air Since it went Airmail, it must have laid in Post Office unpicked up. Also it mailed before 10 AM.

#4 Mailed by time limit for appeal.

#5 Sent money. United States Of America Postal Money Order

2500369918-\$200.00 (25003699918)
 25003699920-\$400.00
 25003699931-80.00

Optional reason or consideration #6 -- have 200 skin graphs, ankles to hips -- Army Tank Blowing up-1943.

Op. #7. Govt needs the silver which I intend to mine from these claims

Op. #8 Have worked real closely with U.S.G.S. in Denver on them. Have did a lot of work on them hard work.

Appellant's argument cannot be accepted on this appeal. Since appellant chose the method of mailing and the date he must bear the consequences of such a choice. Mobil Oil Corp., 35 IBLA 265 (1978); Donald E. Jordan (Supp.), 41 IBLA 60 (1979). Furthermore, the depositing of a copy of the documents in the mail does not constitute a "filing" within the context of 43 CFR 3833.1-2(a). "Filing" is accomplished only when a document is delivered to and received by the proper BLM office. As stated in H. P. Saunder, Jr., 59 I.D. 41, 42-43 (1945):

Filing, it must be observed, is not complete until the document is delivered and received. "Shall file" means to deliver to the office and not send through the United States mails. * * * A paper is filed when it is delivered to the proper official and by him received and filed. United States v. Lombardo, 241 U.S. 73, 76 (1916); Poynor v. Commissioner of Internal Revenue, 81 F. (2d) 521, 522 (C.C.A. 5h, 1936); Weaver v. United States, 72 F. (2d) 20, 21 (C.C.A. 4th, 1934); Tyson v. United States, 76 F. (2d) 553, 534 (C.C.A. 4th, 1935); Wampler v. Snyder, 66 F. (2d) 195, 196 (App. D.C., 1933); Stebbins' Estate v. Helvering, 74 App. D.C. 21, 121 F. (2d) 892, 894 (1941); Creasy v. United States, 4 F. Supp. 175, 177-178 (D.C.W.D.Va., 1933). Even if, as claimed by Saunders, the letter, the usual course of the mails, should have reached the register at Las Cruces prior to the expiration of the lease, the fact nevertheless remains that the applications

were not filed on time, for a paper is considered filed only at the time when it is actually delivered to and received by the office concerned, not when it could have reached that office in the regular course of the mails. Poynor v. Commissioner of Internal Revenue, supra; Weaver v. United States, supra. It is thus immaterial whether or not there was any unusual delay in the delivery of the letter and whether or not the post office was "negligent." [Footnote omitted.]

As noted, supra, this rule has since been codified in the regulations governing the Federal recordation of mining claims. Accordingly, since the documents were not timely filed, BLM properly declared the claim abandoned and void, as required by the statute.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Joan B. Thompson
Administrative Judge

